

CITY COUNCIL PROCEEDINGS

Tuesday, February 2, 2010

1. **CALL TO ORDER AND ROLL CALL**

Mayor Osborne called the regular February 2, 2010 council meeting to order at 6:00p.m.in the council chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Karakehian and Morzel.

Council Member Gray was absent.

Mayor Osborne made a brief comment about the Boards and Commissions recruitment and indicated the deadline to apply was February 19, 2010.

Mayor Osborne reported that due to technical difficulty there would be no live Channel 8 web stream of the council meeting however, it would be loaded online as soon as possible.

Mayor Osborne then indicated that public participation time would be limited to 2 minutes per speaker as more than 15 speakers were signed up.

2. **PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE – 6:05 p.m.**

1. Judd Golden with the American Civil Liberties Union (ACLU) spoke to the public nudity ordinance and noted that the proposed ordinance did not address four issues; 1) equal protection under the law for both sexes, 2) First Amendment issues, 3) other law enforcement options, and 4) public order and community sustainability (fair and complete analysis). He asked what had changed recently and commented that the ordinance was unsubstantiated.
2. Donnie Novak a 40-year resident of Boulder did not believe the issue of nudity had ever been a problem. He urged Council not to take any action until more information was provided about the ramifications.
3. Stacey Balcom provided a Notice of Claim for Boulder Creek Festival and reminded Council that she was still the owner of the Boulder Creek Festival. She spoke to an unconstitutional restraining order. She indicated it was time to renew the restraining order because she was not done being angry and obsessed. She commented she would see Council in court.
4. Valerie Mitchell spoke to Council's 2010 goals and commented that she was pleased with the results. She applauded more affordable housing, agriculture, gay rights, homelessness, and the University Hill redevelopment. Regarding the affordable housing task force she liked the idea of including people who ultimately rent the properties. She asked Council to review the code inspections for rentals and noted some of the standards (i.e. 10-2.7) created confusion for people about what they really meant.
5. Elizabeth Allen spoke to the City Manager's State of City and expressed that the event should be free and open to the public. She commented that she agreed with the staff recommendation on lessening the offense for public nudity.

6. Rob Smoke spoke to the master plan process for Boulder Reservoir and noted that he had submitted questions to staff about motor boats on the Reservoir and had not heard any answers. There had been no testing of soil, no outside experts or consultants, and no input from people who felt chased away from swimming or kayaking because of motor boats. He asked why it was so difficult to reach a decision on the issue.
7. Catherine Pierce commented that the public nudity ordinance discriminated against women with regard to breasts. Women should have the same rights as men and she did not see a problem in the community. She quoted the equal protection clause of the Fourteenth Amendment.
8. Richard Brislin raised concern that the nudity issue was not a rampant problem but rather targeted specific events. He noted the real issue was how to define public nudity.
9. William High representing Mamacitas Restaurant on the Hill raised concern that in the coming weeks, the owners of buildings on both sides would be starting demolition and he was concerned about safety of employees and customers and encroachment. He asked for assurance from the City that it would respond to concerns to protect the private property owners.
10. Stephen Keenan commented that the public nudity laws should stay the way they were and was in favor of giving police officers more discretion.
11. Andrew Harrison commented that there were more important issues that should warrant Council's time other than public nudity. The law should not discriminate against men or women. He wanted urgency on bigger issues, not trivial matters like nudity.
12. Ben Binder shared concern that the public nudity issue was a waste of time and resources and urged Council not to pass the issue on to second reading.
13. Robert Pierce, a Rastic minister, spoke to the public nudity ordinance and indicated it went against his Faith. He supported equal rights and indicated he did not want to be ostracized.
14. Tom Miller asked Council to err on side of decency as he has 3 daughters and grandchildren in the community. He supported Council consideration of the nudity ordinance.

City Manager Response:

1. Regarding the State of the City, Ms. Brautigam indicated she gave the address in the Council Chambers one evening before Council which was televised and would be re-broadcast on Channel 8.
2. Regarding breast feeding, she indicated it was not prohibited as part of the proposed public nudity ordinance.
3. Regarding the demolition on University Hill, she noted the City would enforce all applicable codes.

City Attorney Response:

None.

City Council Response:

Council Member Morzel requested an outline of the process schedule for the Boulder Reservoir. City Manager Brautigam indicated the matter is scheduled to come back to Council in May. In the mean time, the public was welcome to e-mail questions or concerns to the City Manager.

3. **CONSENT AGENDA: - 6:37 P.M.**

- A. **APPROVAL OF CITY COUNCIL MEETING MINUTES FROM JANUARY 5, 2010.**
- B. **ACCEPTANCE OF THE CITY COUNCIL ANNUAL RETREAT SUMMARY FROM JANUARY 22 AND 23, 2010.**
- C. **CONSIDERATION OF A MOTION TO RATIFY THE CITY COUNCIL COMMITTEE APPOINTMENTS.**
- D. **CONSIDERATION OF A MOTION TO ACCEPT THE WASTEWATER UTILITY MASTER PLAN.**
- E. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7710 ADOPTING SUPPLEMENT NO. 103, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7672, 7684, 7687, 7690, 7697, 7698, 7699, AND 7706 AND INCLUDING OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS TO THE BOULDER REVISED CODE, 1981.**
- F. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING CHAPTER 5-6, "MISCELLANEOUS OFFENSES," B.R.C. 1981, BY THE ADDITION OF A NEW SECTION 5-6-13, "PUBLIC NUDITY PROHIBITED," B.R.C. 1981, DEFINING A NEW VIOLATION PROHIBITING PUBLIC NUDITY; REPEALING SECTION 8-3-19, "PUBLIC NUDITY PROHIBITED" FROM CHAPTER 8-3, "PARKS AND RECREATION," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.**
- G. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY TWO ORDINANCES:**
 - 1. **AN ORDINANCE AMENDING TITLES 4 AND 6, B.R.C. 1981 TO ESTABLISH REQUIREMENTS FOR CERTIFIED ARBORIST LICENSES AND OTHER REQUIREMENTS RELATED TO THE PLANTING, CUTTING, REMOVING, OR APPLYING OF PESTICIDES TO ANY TREES; AND**
 - 2. **AN ORDINANCE AMENDING TITLE 8, B.R.C. 1981 TO CREATE AN AFFIRMATIVE OBLIGATION OF ADJACENT PROPERTY OWNERS TO MAINTAIN STREET TREES AND TITLE 9, B.R.C. 1981 TO ESTABLISH TREE PROTECTION REQUIREMENTS IN THE SITE REVIEW, SUBDIVISION, AND LANDSCAPING STANDARDS. IN ADDITION, REQUEST FOR COUNCIL DIRECTION ON PHASE 2 ACTIVITIES FOR FURTHER DEVELOPMENT OF TREE PROTECTION STANDARDS AND REGULATIONS.**

Council Member Cowles moved, seconded by Morzel to approve the consent agenda except for item 3F related to public nudity.

Council Member Cowles moved, seconded by Morzel to amend the main motion by amending item 3F by striking the words on line 14 “or the areola of the female breast” and insert the word “or” between penis and scrotum and would delete exemptions for breastfeeding.

Deputy Mayor Wilson moved, seconded by Ageton to approve the consent agenda including item 3F related to public nudity.

Council Discussion on Consent:

Public Nudity:

Council Member Morzel indicated she was opposed to the nudity ordinance as proposed because it goes too far and is discriminatory. She had concern about banning women’s breasts and not men’s chests.

Council Member Ageton clarified the ordinance precluded breastfeeding. She would like to see it move forward on first reading to hear the public’s feedback. A motion to cut off discussion now was premature.

Council Member Cowles commented the he understood the need for an ordinance but felt the ordinance as proposed sent the wrong message and was more extreme than what law enforcement wanted. There must be another way to deal with the possible resurgence of the mall crawl.

Mayor Osborne clarified that the proposed ordinance exempted breast feeding. She supported moving the ordinance forward on first reading to allow a second reading opportunity for public feedback about what the community wants.

Deputy Mayor Wilson echoed Council Member Ageton’s comments and clarified that the proposed ordinance was an attempt to decriminalize some forms of nudity. Tickets issued to pumpkin runners could be traumatic due to the sexual offender status. This was not the time to cut off discussion of the issue.

Council Member Karakehian commented that there were parts of the ordinance he liked and other parts he didn’t. He supported moving the proposed ordinance forward to a second reading for further discussion.

Council Member Appelbaum commented that there was a need to discuss the issue and the primary change was that the police and District Attorney needed better direction on how to deal with offenders. He supported Council Member Cowles’ change to remove reference to the female breast.

Council Member Becker supported moving the proposed ordinance forward to second reading. She wanted to see the ACLU concerns addressed, particularly those regarding discrimination against women. She supported hearing the public’s ideas about how to better address the matter.

Tree Protection:

Deputy Mayor Wilson spoke to the tree protection ordinance indicating he wanted to better understand the costs associated with each of the provisions in 7712 and 7713. He also requested estimates of enforcement of the provisions.

Council Member Ageton indicated she would like more information about the costs to property owners for review, surveys and the fiscal impacts to homeowners. She would like to better

understand the duty to maintain trees on adjacent property and how that would be enforced. If a tree inventory is mandated, would it be required to be done by a certified arborist? On page 3G-15 a landscape plan is referenced but excludes detached homes – why?

Mayor Osborne asked if there was already an inventory of champion trees and asked whether it would be possible to draft the ordinance so that it protects those trees as well.

Council Member Appelbaum requested examples of different circumstances and the practical implications. Who would the ordinance really affect and under what circumstances.

Council Member Becker asked whether 3rd parties would be able to initiate an application to landmark a tree. She would like more information on the national historic landmark program. Regarding the tree inventory and protection plan on page 14, line 17, of the memo, she requested more information about what the plan is and what it was intended to cover.

Council Member Cowles commented he thought the ordinance envisions a landscape plan that describes the trees as part of the discretionary review. It placed an obligation on the property owner to maintain the tree/s in accordance with the plan. He asked if a property owner wanted to replace a dead tree with a different species tree, would it require a minor modification of site review?

Council Member Karakehian asked why this was a priority given other City issues. He felt it created more government to take care of some isolated issues where trees were cut down. The issue gets very complicated and creates a lot of questions.

Vote was taken on the motion by Council Member Cowles, seconded by Morzel to amend the main motion by amending item 3F by striking the words on line 14 “or the areola of the female breast” and insert the word “or” between penis and scrotum and would delete exemptions for breastfeeding. The motion carried 5:3; Ageton, Karakehian and Wilson opposed, Gray absent. 7:10 p.m.

Vote was taken on the motion by Deputy Mayor Wilson, seconded by Ageton to approve the consent agenda including item 3F related to public nudity. The motion carried 6:2; Cowles and Morzel opposed, Gray absent.

4. **CALL- UP CHECK IN: - 7:10 p.m.**

No interest was indicated.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS: - 7:11 p.m.**

- A. **CONSIDERATION OF AN EMERGENCY ORDINANCE TEMPORARILY SUSPENDING THE REQUIREMENTS RELATED TO CAMPING OR LODGING ON PROPERTY IN SECTION 5-6-10, AND UNLAWFUL USE OF A VEHICLE AS A RESIDENCE IN SECTION 5-6-3, B.R.C 1981, UNTIL MAY 31, 2010, AND SETTING FORTH RELATED DETAILS.**

The presentation on this item was provided by City Manager Jane Brautigam, Housing and Human Services Director Karen Rahn, Police Chief Mark Beckner, and Municipal Court Judge Linda Cooke. Staff reviewed the previous Council direction to return with a draft ordinance, discussed Boulder's current ordinances and camping issues, described research from other cities in the region, and provided additional information about the current state of emergency shelter capacity in the City of Boulder. Both Police Chief Beckner and Municipal Judge Cooke provided details about enforcement of the current ordinances and sentencing of violators. Finally, staff described other efforts including working the Boulder County group of stakeholders to develop a ten-year plan to address homelessness. Staff recommended taking no action on the proposed emergency ordinance and instead asked Council for direction to work toward other efforts to address homelessness as outlined in the specific staff recommendation on page 2 of the memo.

Council Questions:

Council Member Morzel asked about the Shelter's current operating procedures and whether it was based on climate criteria. She thought perhaps the hours could be expanded and operations could provide shelter during months outside of the October to April timeframe. She was particularly concerned about people who had jobs but couldn't arrive at the shelter in time to get a bed. Staff could provide additional information from Jim Budd about the Shelter's operating criteria.

Council Member Ageton asked about other cities' contribution to the shelter, a Boulder County facility, and requested data to address rumors that other cities transport the homeless to Boulder. Staff reported that there was data on that issue that could be provided. Ms. Ageton also requested data on the Shelter's budget and where their operating budget comes from.

Deputy Mayor Wilson asked whether the Shelter was given specific guidelines when it was permitted in North Boulder. Acting City Attorney Gehr indicated he would follow up. Council wanted to see the shelter's management plan and discuss whether there would be opportunities to expand its services.

Council Member Becker raised concern about women with children being ticketed. Judge Cooke responded that she had not seen women with children come through her courtroom but acknowledged sometimes it was difficult to connect groups of people. Council Member Becker raised additional questions about whether those ticketed for camping were provided with other options or a ride to a facility.

Council Member Morzel asked whether there was a City role in how the Shelter operated and how best the City could influence their management plan. She asked what technical assistance to faith based organizations meant.

Council Member Karakehian asked if there were any plans for shelter expansion and whether there was a central phone number during colder months for overflow. Staff responded that the shelter provided that service. He raised concern about how the homeless can get to another facility. Staff responded that sometimes the shelter can provide bus tokens or the Boulder Cares organization also provides assistance. A suggestion to utilize police officers to transport the homeless was discouraged by the Police Chief as that takes officers away from other duties. Council Member Karakehian wanted to further address the transportation issue.

The public hearing was opened:

1. Isolde Hathaway commented that if there weren't enough beds at the shelter then council could not make it illegal to sleep outside. He urged council to consider the human rights issue.
2. Audrey Fishman Franklin raised concern that Boulder was suppose to be an open and welcoming community and the homeless should not be viewed differently. She urged a moratorium on the camping ordinance.
3. Madelyn Clair commented that camping did not promote a better tomorrow, only perpetuated more camping. Please don't take action on the ordinance.
4. Elizabeth Allen agreed with the previous speakers comments and urged Council to work together with the community.
5. Rob Smoke asked council to err on the side of compassion and work with other community resources.
6. Brad Hart supported a moratorium on camping and urged council to decriminalize sleeping and designate sleeping areas where bathrooms exist.
7. Terri Sternberg asked council to let the homeless help decide what will work.
8. Jessica Sideways, a Naropa student, commented that homeless options are limited in Boulder and council should focus on creating new programs
9. Ian Engle, Executive Director of the Center for People with Disabilities, expressed his excitement about working with the City to develop plans for these issues. A moratorium gives people the opportunity to develop new strategies. People with physical and mental disabilities was a concern.
10. Tim Hundsdorfer commented that mental illness and alcoholism among the homeless was an issue that needed attention.
11. Stephen Ware noted that there were many homeless from Denver and the shelter needed more beds and better air circulation. He also commented that men who pay child support cannot make it.
12. Michael Fitzgerald commented that he liked sleeping outside and intended to stay in Boulder. Finding work was difficult and he supported the City's efforts.
13. Harry Hempy urged council to continue its work and spoke to the human rights aspect of the issue.
14. Carolyn Bninski with the Rocky Mountain Peace and Justice Center thanked council and urged it to extend its support throughout the year. She supported the moratorium on camping.
15. David E. Ward with a non-profit organization called niceworld.org spoke to the varying types of people who become homeless and urged Council support of local non-profits.
16. James Duncan spoke to the society's treatment of the poor and commented that people are afraid of the homeless
17. Stephen Keenan commented that the People's Parking Lot (former St. Julien) worked and the city needed to address the spiritual and emotional impacts on the homeless.
18. Wally Barrett thanked council for its work and urged it to continue working on other options.
19. Sky Osawa spoke to the need to seriously understand people and humanity in our society and urged council to explore eminent domain of unused public/private property.

20. Asa Henderson asked why business owners and residents have more right to use a park space. It circumvents dealing with the homeless as people. This is also prejudice against the mentally ill.
21. Eric Ross, a student for Peace and Justice at Naropa, supported a temporary moratorium and decriminalizing poverty. It's a class-biased law motivated by fear.

Council Member Cowles moved, seconded by Morzel to approve the staff recommendation to direct staff to work with current homeless service providers to expand temporary overflow sites for shelter for immediate needs, assess other viable strategies in conjunction with the Ten Year Plan to Address Homelessness and the HRC workplan, and bring recommendations back for council consideration, and to include options related to transportation.

Council Member Wilson offered a substitute motion, seconded by Ageton to:

- 1) Accelerate efforts to assist faith based organizations in providing overflow shelter for homeless people.
- 2) Investigate opportunities to allow sleeping in automobiles in private parking lots with the permission of the property owners and access to restroom facilities.
- 3) Move forward with an aggressive ten year plan in cooperation with the Human Relations Commission, Boulder County Housing and Human Services Department and stakeholder groups to provide long term solutions for homeless shelter and housing.
- 4) Work with other communities in Boulder County and with Broomfield County to participate in short term and long term solutions.
- 5) Support the Boulder Police Department's continued use of discretion in the enforcement of current ordinances.
- 6) Direct the City Manager's Office and City Attorney's Office to research current state and local law dealing with public intoxication and report back to the City Council on possible local and state legislative initiatives that would maximize public safety from the harmful behaviors associated with public intoxication.

The motion was withdrawn.

Vote was taken on the motion by Council Member Cowles, seconded by Morzel to approve the staff recommendation to direct staff to work with current homeless service providers to expand temporary overflow sites for shelter for immediate needs, assess other viable strategies in conjunction with the Ten Year Plan to Address Homelessness and the HRC workplan, and bring recommendations back for council consideration, and to include options related to transportation. The motion carried 8:0; Gray absent. 9:30 p.m.

Council took a 5-minute recess at 9:30 p.m.

6. **MATTERS FROM THE CITY MANAGER: - 9:35 p.m.**

- A. **UPDATE ON BILLS INTRODUCED IN THE 2010 SESSION OF THE COLORADO GENERAL ASSEMBLY AND CONSIDERATION OF AMENDMENTS TO THE CITY'S 2010 STATE AND FEDERAL LEGISLATIVE AGENDA AND 2010 STATE LEGISLATIVE PRIORITIES.**

Policy Advisor Carl Castillo provided Council Members with an update on recent bills introduced in the 2010 State Legislature and provided an overview on the City's position on each.

Council Member Ageton requested information be provided as soon as possible on three constitutional ballot amendments that the City will likely consider opposing.

7. **MATTERS FROM THE CITY ATTORNEY:** None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. POTENTIAL CALL-UPS:

1. **OUT OF CITY UTILITY AGREEMENT AND REVOCABLE PERMIT FOR 1104 CHERRYVALE ROAD. WIP DATE: JANUARY 21, 2010. LAST OPPORTUNITY FOR CALL-UP IS FEBRUARY 16, 2010. STAFF APPROVAL.**

No action was taken on this item.

Other Matters:

Deputy Mayor Wilson asked for a nod of five from Council to direct staff to review snow removal enforcement and consider eliminating the warning ticket for the next winter season. He commented that it was a wasted staff resource and continued to be an ongoing issue throughout the City.

There was a nod of five from Ageton, Cowles, Morzel, Osborne and Wilson to direct staff to pursue the issue.

Council Member Morzel announced that the Boulder County Resource Conservation Advisory Board had four openings and was seeking applicants.

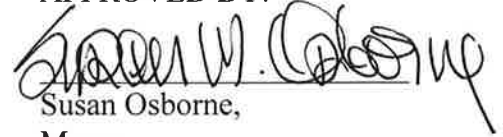
9. **PUBLIC COMMENT ON MATTERS:** (15 min.) Public comment on any motions made under Matters.

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

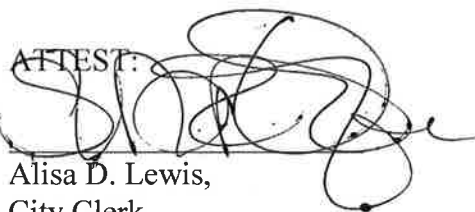
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 10:30 P.M.

APPROVED BY:


Susan Osborne,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk